

The following article was originally published in the February 17, 2008 issue of The Record newspaper.

Know Your Association's Governing Documents

By Eric F. Frizzell, Esq., Buckalew Frizzell & Crevina LLP

Every unit owner in a condominium association should be thoroughly familiar with the association's master deed and by-laws. These key governing documents describe the rights and duties of unit owners and the association, restrict the uses of units and the common elements, prescribe procedures for association governance, and contain numerous other provisions that significantly affect life in the condominium and management of the association's affairs. Reviewing some of the common types of provisions will illustrate the importance of knowing your association's governing documents.

Collection Procedures. The master deed and by-laws normally provide an array of remedies against unit owners who fail to promptly pay their monthly common expenses or other charges. The two main remedies are imposing a lien against the owner's unit and foreclosing on it, and suing the owner for a personal monetary judgment. Under the New Jersey Condominium Act, an association also may impose late fees, interest, and reasonable attorneys' fees, but only if expressly authorized by the master deed or by-laws. The governing documents also may permit the association (1) to suspend a delinquent unit owner's rights and privileges, such as use of common recreational facilities and the right to vote; (2) to demand that the owner immediately pay all remaining installments of the annual assessment, known as "acceleration"; and (3) to compel the tenant of a defaulting investor-owner to pay all rent directly to the association instead of to the owner, known as a "rent assignment".

Restrictions and Fines. A master deed usually contains various restrictions that are intended to promote the quality of life in the community and to protect the health, safety, and welfare of residents. Restrictions cover diverse issues, such as the permitted uses of units and common elements, pet ownership, parking, prohibited vehicles, floor and window coverings, noise limitations, moving procedures, exterior decorations, and installation of gas grills. Under the Condominium Act, a board may fine unit owners who violate these restrictions, or other provisions in the master deed, by-laws, or rules and regulations, but only if (1) fines are expressly authorized by the master deed or by-laws and (2) the unit owner is given written notice of the action taken, its alleged basis, and the right to participate in alternative dispute resolution, such as mediation or non-binding arbitration.

If the master deed or by-laws specify the amount of the fine, then it can be increased only by a formal amendment to those documents, and not merely by a board resolution. The maximum fine allowed by New Jersey law is \$500 for a single violation and \$5,000 for a continuing violation.

Division of Responsibility for Repairs. The typical division of repair duties in a condominium is that unit owners are responsible for repairing their units and the association is responsible for the common elements. Disputes sometimes arise, however, between a unit owner

and an association regarding responsibility for particular items. Resolving these disputes requires careful analysis of various master deed and by-law provisions that define and describe the boundaries of the “units”, “general common elements” and “limited common elements”, and that identify particular repair obligations of unit owners and the association. In addition, if a repair is necessary due to a “casualty loss” such as fire or storm damage, the governing documents’ insurance sections may shift to the association the unit owner’s normal obligation to repair or replace original flooring, cabinetry, appliances and other “unit betterments.” The governing documents also may obligate individual unit owners to obtain insurance, commonly known as an HO-6 policy, on their units and personal property.

Leasing Restrictions. The master deed may contain detailed restrictions on leasing, such as a one-year minimum term, a requirement to use a lease or rider approved by the association, mandatory payment of a rental review fee, and even a limitation on the total number of units that can be leased throughout the community at any one time.

Satellite Dishes. Many master deeds purport to prohibit unit owners from installing an antenna in any location. Although unit owners clearly do not possess any independent legal right to install a satellite antenna on the general common elements, such as a roof, during the last decade the Federal Communications Commission has limited the power of associations to restrict unit owners from installing certain types of satellite dishes in a location, such as a balcony, that is under the owner’s exclusive use or control. Associations still retain some significant rights, however, such as the right to require installation in a location that is not visible from neighboring property (as long as reception is not impaired), and to impose some safety-related restrictions.

Know your association’s governing documents – by doing so, you can avoid legal disputes with the association, improve your quality of life, and contribute to a more harmonious community.